



February 15, 2017

VIA EMAIL

Freedom of Information Officer
U.S. Environmental Protection Agency Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590
R5foia@epa.gov

Re: FOIA Request re Opacity Violations at American Electric Power's Gavin, Ohio Power Plant

Dear Records Custodian:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency ("EPA") provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.* The Sierra Club is the nation's oldest environmental organization. It is dedicated to the protection and preservation of the natural and human environment. The Sierra Club is committed to solving the pressing environmental and health problems associated with the mining, burning and disposal of coal and its combustion by-products.

Documents Requested

Please provide copies of the following records:

All documents that support or underlie EPA's determination—reflected in the Notice of Violation and Finding of Violation, dated January 23, 2017—that American Electric Power, as operator of the Gavin Power Plant in Cheshire, Ohio, has violated and continues to violate the Ohio SIP and the Gavin plant's Title V permit by exceeding 20% opacity for emissions at the Gavin Power Plant, including, without limitation, all documents related to the "visible emissions readings" taken by EPA on April 6, 2016, August 1, 2016, and October 28, 2016, respectively.

The referenced Notice of Violation/Finding of Violation for the Gavin Power Plant is provided here as Attachment A. To aid your search for responsive documents, I note that Ethan Chatfield of Region 5 is listed as a contact for this NOV/FOV.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information should be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in the dialog concerning pollution generated by the Gavin facility, as well as EPA's investigations related to such pollution.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute—that "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records concerns identifiable "operations and activities of the government."

The activities denoted in this request are "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by a federal agency will meet this threshold" of identifiable operations or activities of the government. And, in any event, the requested

documents relate to EPA enforcement of Clean Air Act requirements, which is an activity of the U.S. government.

2. The disclosure of the requested documents has an informative value and will be “likely to contribute to an understanding of Federal government operations or activities.”

The Freedom of Information Act Guide makes it clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency’s operations or activities because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public understanding of EPA’s investigation and enforcement process for alleged Clean Air Act violations, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency’s enforcement of federal environmental statutes and regulations.

3. The disclosure contributes to the understanding of the public at large.

The Sierra Club and its members have a longstanding interest and expertise in the subject of coal-fired power plants. More importantly, the Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in a broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.” The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the Club’s website, emailing, and list-serve distribution to members. Such dissemination will inform the public regarding how EPA goes about investigating and enforcing Clean Air Act requirements.

4. The disclosure contributes “significantly” to public understanding of government operations or activities.

The records requested will contribute “significantly” to the public understanding of the government’s investigatory and enforcement role, and its “operations and activities” associated with the alleged Clean Air Act violations at the American Electric Power Gavin facility. Further, the disclosure of the requested records is essential to public understanding of the potential impacts of emissions from this facility. After disclosure of these records, the public’s understanding of the potential impacts of emissions from this facility will be significantly enhanced.

5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit

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interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

* * *

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency’s regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Tony G. Mendoza

Tony Mendoza
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5589
tony.mendoza@sierraclub.org

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 23 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John McManus
Vice President, Environmental Services
American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215

Re: Notice of Violation and Finding of Violation
American Electric Power, Gavin Power Plant
Cheshire, Ohio

Dear Mr. McManus:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to American Electric Power (AEP) under Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). We find that AEP has violated and continues to violate the Ohio State Implementation Plan and AEP's Title V Operating Permit at the Gavin Power Plant, located in Cheshire, Ohio.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



Edward Nam
Director
Air and Radiation Division

Enclosure

cc: Janet J. Henry, Deputy General Counsel
American Electric Power

Robert Hodanbosi, Chief
Division of Air Pollution Control, Ohio EPA

Melissa Witherspoon, Acting Assistant Chief
Ohio EPA/DAPC, Southeast District Office

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**American Electric Power
Gavin Power Plant
Cheshire, Ohio**

**Proceedings Pursuant to
Section 113(a)(1) of the
Clean Air Act, 42 U.S.C.
§ 7413(a)(1)**

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) **NOTICE OF VIOLATION and**
) **FINDING OF VIOLATION**
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) **EPA-5-17-OH-11**
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NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice of Violation and Finding of Violation (NOV/FOV) in accordance with Sections 113(a)(1) and (a)(3) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1) and (a)(3). The authority to issue this NOV/FOV has been delegated to the Regional Administrator of the EPA, Region 5, and redelegated to the Director of the Air and Radiation Division.

EPA finds that American Electric Power (AEP) has violated and continues to violate the Ohio State Implementation Plan (SIP) and the facility's Title V Operating Permit at the Gavin Power Plant, located in Cheshire, Ohio, as follows:

Statutory and Regulatory Background

1. The CAA is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).
2. Section 108(a) of the CAA, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the CAA, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) to protect the public health and welfare.
3. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS. Section 110 also requires that each SIP contain adequate provisions prohibiting any source within the state from emitting any air pollutants in

amounts which will interfere with attainment or maintenance of the NAAQS or cause significant deterioration of air quality in any other state. *See* 40 C.F.R. Part 52.

4. Section 502(b) of the CAA, 42 U.S.C. § 7661, requires the Administrator of the EPA to promulgate regulations which establish the minimum elements of a permit program to be administered by any air pollution control agency. *See* 40 C.F.R. Part 70.
5. Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (a)(3), provide that the Administrator may issue an administrative penalty order pursuant to Section 113(d), 42 U.S.C. § 7413(d), or bring a civil action pursuant to Section 113(b), 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, an applicable implementation plan, a standard of performance and Title V of the CAA, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder. *See also* 40 C.F.R. § 52.23.

Ohio State Implementation Plan – Opacity Regulations

6. EPA approved Ohio Administrative Code (OAC) Chapter 3745-17-07(A)(1) as part of the federally enforceable Ohio SIP effective June 27, 1994. 59 *Fed. Reg.* 27464 (May 27, 1994). EPA approved minor revisions to the rule effective December 27, 2010. 75 *Fed. Reg.* 65567 (Oct. 26, 2010).
7. OAC 3745-17-07(A)(1) of the Ohio SIP requires that “visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. [The]... visible particulate emissions from any stack may exceed twenty per cent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed sixty per cent opacity, as a six-minute average, at any time.” June 27, 1994 *See* 59 *Fed. Reg.* 27464.

Title V Requirements

8. EPA fully approved Ohio’s Title V operating permit program effective October 1, 1995. *See* 40 C.F.R. Part 70, Appendix A; 60 *Fed. Reg.* 42045 (August 15, 1995). The Ohio regulations governing the Title V operating permit program are codified at OAC 3745-77, and are federally enforceable pursuant to Section 113(a)(3).
9. On January 30, 2002, the Ohio Environmental Protection Agency issued a Final Title V Permit to the Gavin Power Plant. The Title V Permit provides in Part III, A.I.1 for the Unit 1 Main Boiler (B003) and Unit 2 Main Boiler (B004) that, pursuant to OAC 3745-17-07(A), “visible particulate emissions shall not exceed 20% opacity as a 6-minute average, except as provided by rule.”

Factual Background

10. AEP is incorporated in New York.
 11. AEP is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
 12. The Gavin Power Plant is located at 7397 State Route 7 North, Cheshire, Ohio, which is in Gallia County.
 13. AEP operates two coal-fired boilers at the Gavin Power Plant, identified as Unit 1 (B003) and Unit 2 (B004).
 14. Units 1 and 2 are approximately 1,300 MW_{net} electric utility steam-generating units each having a nominal capacity of 11,936 mmBtu/hr and began commercial operation in 1974 and 1975, respectively.
 15. On April 6, 2016, EPA performed visible emissions readings of the combined plume for the Unit 1 and Unit 2 stacks in accordance with EPA Method 9 and observed 6-minute average opacity in excess of the 20% limitation.
 16. On August 1, 2016, EPA performed visible emissions readings of the Unit 1 stack in accordance with EPA Method 9 and observed 6-minute average opacity in excess of the 20% limitation.
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17. On October 28, 2016, EPA performed visible emissions readings of the Unit 2 stack in accordance with EPA Method 9 and Method Alt-082 and observed 6-minute average opacity in excess of the 20% limitation.

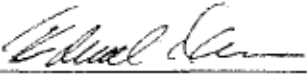
Violations

18. AEP violated and continues to violate OAC 3745-17-07(A)(1)(a) of the Ohio SIP, and the Title V Permit at the Gavin Power Plant Units 1 and 2 by exceeding 20% opacity, as a six-minute average, on an ongoing basis.
19. Pursuant to Section 113(e) of the CAA, the violations set forth in Paragraph 18 above are presumed to continue each day until AEP establishes continuous compliance except to the extent that AEP can prove by a preponderance of the evidence that there were intervening days during which no violations occurred.

Environmental Impact of Violations

20. Violation of the opacity limits and excess sulfuric acid mist emissions increase public exposure to unhealthy particulate matter. Particulate matter, especially fine particulate, contributes to respiratory problems, lung damage, and premature deaths.

1/18/17
Date



Edward Nam
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Certified Mail, Return Receipt Requested letter to:

John McManus, Vice President
Environmental Services
American Electric Power
1 Riverside Plz
Columbus, OH 43215-2373

I also certify that I sent a copy of the Request to Provide Information Pursuant to the Clean Air Act by E-mail to:

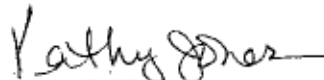
Janet J. Henry
Deputy General Counsel
American Electric Power
1 Riverside Plaza
Columbus, OH 43215

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
50 West Town Street, Suite 700

P. O. Box 1049
Columbus, Ohio 43216-1049

Melissa Witherspoon, Acting Assistant Chief
Ohio EPA/DAPC, Southeast District Office
2195 Front Street
Logan, Ohio 43138

On the 23rd day of January 2016.



Kathy Jones
Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 000 7647 000 1